

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2003-026
)	
Wildwood Canyon Country Estates, LLC)	for
1535 South D Street, Suite 200)	Administrative Civil Liability
San Bernardino, CA 92408)	
)	
<u>Attn: David Cooper</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Wildwood Canyon Country Estates, LLC (Wildwood) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga. Wildwood or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Wildwood is alleged to have violated Provisions A.3 ("Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.") and C.2 ("All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.") of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Wildwood failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged storm water containing pollutants to waters of the United States from its construction site. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.
5. Runoff from the Wildwood construction site (Tract 15548) in the City of Yucaipa is regulated under the State's General Permit, WDID No. 8 36S316752.

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6. This complaint is based on the following facts:

- a. On November 26, 2002, Board staff conducted a routine inspection of the construction site located at the northwest corner of Wildwood Canyon Road and Holmes Street, in the City of Yucaipa. During the inspection, Board staff observed that best management practices (BMPs) implemented to control the discharge of pollutants from the site were not adequate. A significant amount of soil erosion from the previous storm event was observed on all slopes. Deteriorated and ineffectively placed sandbags were also observed. Inadequate BMP implementation and maintenance resulted in the discharge of sediments to the local storm drain. Mr. Ron Butts, the construction superintendent was not available at the site during the inspection.
- b. The site had not implemented the BMPs specified in the SWPPP. General Note (4) on Exhibit A of the SWPPP states, "Erosion control as defined herein shall consist of temporary soil stabilization measures on grades/disturbed areas, placement of gravel bag velocity reducers and straw bale barriers, and other such temporary measures to control erosion". None of the site stabilization measures were implemented at the southern slopes of the property. Previous rain events had caused heavy erosion as evidenced by rills and deep gullies on the slopes.
- c. On November 27, 2002, Board staff talked to Mr. David Cooper, Wildwood construction manager, to inform him that the BMPs were not adequate and that an effective combination of erosion and sediment controls was needed.
- d. On December 12, 2002, a Notice of Violation was sent to Wildwood outlining the aforementioned violations and the requirement to prevent any further migration of pollutants to the storm drain systems.
- e. On December 16, 2002, Board staff re-inspected the site during a rain event and observed sediment-laden discharge from the site into the storm drain system. Loose dirt and mud were observed on all internal streets. The few sandbags installed at the site were overwhelmed with sediment and sediment-laden storm water, which was bypassing the sandbags. The construction superintendent was not on site during the inspection.
- f. On December 17, 2002, Board staff again visited the site to evaluate the condition of the BMPs after the storm event. All chevrons were full of sediments. The few sandbags placed around the storm drain catch basin inlets were misplaced. There were big gaps between sandbags that allowed sediment discharge into the storm drain. Lack of BMP maintenance and inadequate implementation of BMPs allowed sediment-laden discharge to enter the storm drain system and ultimately to the receiving waters.
- g. On December 17, 2002, staff contacted Mr. David Cooper and discussed the site conditions, including the ineffective BMPs, at the site. He was informed that the control measures were ineffective and failed to control

pollutants on site. He was further requested to stabilize all exposed slope areas to retain soil and sediment from leaving the construction site. He was also requested to implement an effective combination of erosion and sediment control on all disturbed areas.

- h. On December 27, 2002, Regional Board staff received a letter from Mr. David Cooper stating that they had placed additional sandbags to protect the slopes and to control silt and mud. A copy of the SWPPP was also provided. Staff's review revealed that the SWPPP was deficient. Some of the deficiencies include inadequate erosion control measures, lack of sediment tracking controls, inadequate program for inspection and maintenance of BMPs, lack of training documentation, and absence of a monitoring program.
 - i. On January 6, 2003, Board staff visited the site to evaluate site conditions. Staff did not observe any improvements in the implementation of BMPs. The construction superintendent was contacted at that time, and staff once again explained the need for an effective combination of sediment/erosion control measures to minimize erosion and to control sediment discharges.
 - j. On January 8, 2003, Board staff again observed sediment-laden storm water discharged from the construction site. There were no significant improvements in the implementation of BMPs. A significant amount of sediment-laden storm water discharge was observed from a number of locations within the construction site flowing into the local storm drain system. The sediment control BMPs were not adequate to control the pollutants resulting from soil erosion.
 - k. The facility was repeatedly warned of the need for improvements to its erosion and sediment controls. Its failure to develop and implement appropriate BMPs and its failure to maintain and upgrade BMPs caused discharge of sediments into the storm drain system during most storm events in December 2002 and January 2003.
7. Wildwood Canyon is alleged to have violated Provision A.3 and C.2 of the General Permit.
8. Wildwood violated the General Permit by failing to develop and properly implement an effective SWPPP. Wildwood also violated the General Permit by discharging storm water containing pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
9. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

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10. The sediment-laden storm water discharged to the storm drain system from the site was estimated to be at least 894,000 gallons.
11. Pursuant to Section 13385(c), the total maximum assessment for which Wildwood is civilly liable is \$8.95 million based on \$20,000 (\$10,000 per day for 2 days of violation observed by staff) plus \$8.93 million based on estimated discharge (0.894 million gallon -1,000 = 0.893 million gallons @\$10 per gallon) for the violations cited in Paragraph 8, above.
12. Wildwood saved approximately \$30,494 by not implementing adequate BMPs at the site (7 acres of slopes @ \$.10/sqft). Board staff costs for investigating this incident were approximately \$2,100 (30 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 13, below.
13. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>Soil stabilization measures specified in the SWPPP were not implemented. Due to facility's lack of adequate best management practices (BMPs) implementation, sediment-laden storm water discharges occurred periodically and entered the storm drain system. Photos taken and a sample collected at the site indicated muddy water discharge. Sediment-laden storm water was observed entering the storm drain. The storm drain discharges into Wildwood Canyon Creek.</p> <p>Wildwood ignored repeated written and oral requests for corrective measures at the site.</p> <p>Wildwood's inaction and failure to upgrade the BMPs at the site and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and caused pollutants to be discharged into the waters of the US.</p>

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B. Culpability	The discharger violated the terms of the General Permit by failing to properly implement an inspection program to monitor the effectiveness of the BMPs. Despite repeated requests to upgrade erosion control measures at the site, the discharger did not implement adequate erosion control BMPs and continued to discharge polluted storm water into the storm drain system. Wildwood has not been responsive to Regional Board staff's efforts to bring the site into compliance. A Notice of Violation was issued by Board staff on December 12, 2002 for several violations of the General Permit including lack of a SWPPP and inadequate implementation of BMPs.
C. Economic Benefit or Savings	Wildwood saved approximately \$30,494 by not implementing adequate BMPs for slope protection at the site during the current rainy season.
D. Prior History of Violations	Despite the Notice of Violation and several oral requests, Wildwood was not in compliance during four subsequent inspections of the site including during the rain event on January 08, 2003.
E. Staff Costs	Regional Board staff spent approximately 30 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$2100).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

14. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Wildwood in the amount of \$35,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Wildwood may waive its right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order for \$35,000 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

2-19-03
Date


Gerard J. Thibeault
Executive Officer

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**Complaint No. R8-2003-0026
for
Administrative Civil Liability**

WAIVER OF HEARING

I agree to waive the right of Wildwood Canyon Country Estates, LLC to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0026. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$35,000. I understand that I am giving up the right of Wildwood Canyon Country Estates, LLC to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date _____

for Wildwood Canyon Country Estates, LLC

Invoice Date: 02/14/2003
Enforcement Action ID: 67247
Enforcement Order No.: R8-2003-0026



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis
Governor

February 19, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Cooper
Wildwood Canyon Country Estates, LLC
P1535 South D Street, Suite 200
San Bernardino, CA 92408

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003- 0026, TRACT 15548,
YUCAIPA, SAN BERNARDINO COUNTY**

Dear Mr. Cooper:

We are enclosing a certified copy of Complaint No. R8-2003-0026, proposing administrative civil liability of \$35,000 for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, NPDES No. CAS000002, WDID No. 836S316752. An invoice and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on April 4, 2003. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for \$35,000. The check or money order should be made payable to the State Water Resources Control Board. The payment, the Waiver Form and the bottom portion of the invoice should be mailed to the State Board in the enclosed preprinted envelope.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to March 5, 2003. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Any prior history of violations;

California Environmental Protection Agency

Wildwood Canyon Country Estates, LLC - 2 -
Mr. Cooper David

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4. Your degree of culpability;
5. Economic benefit or saving; and
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Ms. Milasol C. Gaslan at 909-782-4419 or Mr. Michael Adackapara at 909-782-3238. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at 916-341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0026, Waiver Form, Invoice and Envelope

Cc with enclosures:

Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of Chief Counsel
Tom Huetteman, US-EPA, Region 9 (WTR-7)
San Bernardino County, Storm Water Program – Naresh Varma, NPDES
Coordinator
City of Yucaipa – Fred Hawkins, NPDES Coordinator